

# Reclamation Manual

## Directives and Standards

---

- Subject:** Reclamation Consultation, Conservation, and Recovery Activities Under the Endangered Species Act of 1973, as Amended
- Purpose:** Describes Reclamation's commitment pursuant to applicable Federal law to: (1) support the goals and requirements of the Endangered Species Act to protect, conserve, and recover threatened and endangered species, their habitat, and the ecosystems upon which they depend, and (2) support activities which are intended to avoid future listings.
- Authority:** Federal Reclamation law, including individual project authorizations and contracts; the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Fish and Wildlife Coordination Act of 1934, as amended (16 U.S.C. 661 *et seq.*); the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742a *et seq.*); the Migratory Bird Conservation Act (16 U.S.C. 715 *et seq.*); the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 4601-4 *et seq.*); and, for projects authorized after July 9, 1965, the Federal Water Project Recreation Act, as amended (16 U.S.C. 4601-12 *et seq.*).
- Contact:** Environmental and Planning Coordination Office, D-5100
- 

1. **Implementation.** Pursuant to Reclamation's Endangered Species Act Policy, effective July 7, 1999, Reclamation is implementing the following directives and standards for consultation, conservation, and recovery activities under the Endangered Species Act of 1973 (ESA), as amended. These directives and standards apply to all Reclamation activities which may affect listed, proposed, candidate, and imperiled species, their habitats, and the ecosystems upon which they depend.
2. **Definitions.**
  - A. **Candidate Species** means plant and animal taxa considered for possible addition to the Federal List of Endangered and Threatened Species. These are taxa for which the National Marine Fisheries Service (NMFS) or the Fish and Wildlife Service (FWS) has on file sufficient information on the biological vulnerability and threat(s) to support issuance of a proposal to list, but issuance of a proposed rule is currently precluded by higher priority listing actions.
  - B. **Conference** is a process of early interagency cooperation involving informal or formal discussions between a Federal agency and the NMFS/FWS regarding the likely impact of an action on a proposed species or proposed critical habitat. Conferences are:
    - (1) Required for proposed Federal actions likely to jeopardize proposed species, or destroy or adversely modify proposed critical habitat;

## Reclamation Manual

### Directives and Standards

---

- (2) Designed to help Federal agencies identify and resolve potential conflicts between an action and species conservation early in project planning; and
  - (3) Designed to develop recommendations to minimize or avoid adverse effects to proposed species or proposed critical habitat.
- C. **Conservation Actions** mean discretionary actions which are necessary to bring endangered species or threatened species to the point at which measures provided pursuant to the ESA are no longer necessary. For Reclamation purposes, conservation actions include conservation measures and conservation recommendations as described in the FWS/NMFS Consultation handbook, and also means actions taken to avoid future listings of proposed, candidate, or imperiled species.
- D. **Critical Habitat** means:
- (1) Specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the ESA, on which are found those physical or biological features (constituent elements).
    - (a) Essential to the conservation of the species.
    - (b) Which may require special management consideration or protection.
  - (2) Specific areas outside the geographical area occupied by the species, at the time it is listed in accordance with provisions of section 4 of ESA, upon determination by the Secretary that such areas are essential for the conservation of the species.
- E. **Cumulative Effects** are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation. This definition applies only to section 7 analyses and should not be confused with the broader use of this term in the National Environmental Policy Act or other environmental laws.
- F. **Endangered Species** are those species identified by the FWS or NMFS as a species which is in danger of extinction throughout all or a significant portion of its range.
- G. **Formal Consultation** is a process between NMFS/FWS and a Federal agency or applicant that:
- (1) Determines whether a proposed Federal action is likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat;

## Reclamation Manual

### Directives and Standards

---

- (2) Begins with a Federal agency's written request and submittal of a complete initiation package; and
  - (3) Concludes with the issuance of a biological opinion and incidental take statement by either NMFS or FWS.
- H. **Imperiled Species** means any species of fish, wildlife, or plant which could become listed as endangered or threatened pursuant to the ESA absent actions to protect and conserve them. Such status shall be determined when appropriate by Reclamation on a Regional Office basis in coordination with other Reclamation offices, FWS, NMFS, Tribes, and State fish and wildlife agencies. This determination will be based upon currently existing, best available, information.
- I. **Indirect Effects** are those effects that are caused by or will result from the proposed action and are later in time, but still reasonably certain to occur.
- J. **Informal Consultation** is an optional process that includes all discussions and correspondence between the NMFS/FWS and a Federal agency or designated non-Federal entity, prior to formal consultation, to determine whether a proposed Federal action may affect listed species or designated critical habitat. If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation is required, (except where the Services concur, in writing, that a proposed Federal action "is not likely to adversely affect" listed species or designated critical habitat).
- K. **Interdependent Actions** are actions having no independent utility apart from the proposed action.
- L. **Interrelated Actions** are actions that are part of a larger action and depend on the larger action for their justification.
- M. **Listed Species** means any species of fish, wildlife, or plant which has been determined to be threatened or endangered under section 4 of the ESA.
- N. **Proposed Critical Habitat** means habitat that is proposed in the *Federal Register* to be designated as critical habitat, or habitat proposed to be added to an existing critical habitat designation, under section 4 of ESA for any listed or proposed species.
- O. **Proposed Species** means any species of fish, wildlife, or plant proposed in the *Federal Register* to be listed under section 4 of the ESA.
- P. **Reasonable and Prudent Alternatives** are recommended alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of

## Reclamation Manual

### Directives and Standards

---

Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the FWS believes would avoid the likelihood of jeopardizing the continued existence of listed species or the destruction or adverse modification of designated critical habitat.

- Q. **Reasonable and Prudent Measures** are actions the FWS believes necessary or appropriate to minimize the impacts, i.e., amount or extent, of incidental take.
- R. **Recovery** means improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a) of the ESA.
- S. **Species** includes any subspecies of fish, wildlife, or plants and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.
- T. **Threatened Species** are those species identified by the FWS or NMFS as a species likely to become an endangered species within the foreseeable future throughout all of a significant portion of its range.

### 3. General Statements.

- A. **Guidance.** Reclamation will refer to the most current FWS/NMFS Endangered Species Consultation Handbook (FWS/NMFS Consultation Handbook) for guidance in carrying out consultation and conferencing under the ESA.
- B. **Participation Opportunities.** Reclamation will provide opportunities for FWS/NMFS personnel to participate in Reclamation's consultation, conservation, and recovery activities, including activities not covered by formal consultation requirements.
- C. **Integration With Other Compliance Activities.** Reclamation will integrate consultation, conservation, and recovery activities with other appropriate activities and processes, including, but not limited to, National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), and Indian Trust Assets (ITA) compliance.
- D. **Determining Discretion.** Reclamation will determine whether its actions are discretionary or nondiscretionary and will consult as appropriate. Where there are questions regarding Reclamation discretion, Reclamation will seek clarification from the Solicitor's Office and informally discuss the issues with FWS/NMFS.
- E. **Internal Agency Review of Effects.** Reclamation will review the effects of its operations and maintenance activities at existing projects (including projects constructed prior to passage of the ESA and projects where no prior consultation has occurred) to determine effects on listed, proposed, candidate, and imperiled species. Reviews may be conducted as part of ongoing operational reviews or preparation of

## Reclamation Manual

### Directives and Standards

---

annual operating plans as determined by each Regional Director's Office and may involve informal discussions with FWS, NMFS, tribes and/or State agencies. For projects where such reviews have previously been accomplished and are considered current, no additional review is needed.

#### 4. Consultation Activities.

- A. **Determining Effects.** Reclamation will undertake informal consultation, formal consultation, and/or conferencing to determine the effects that Reclamation actions (associated with proposed and existing projects, including conservation activities) may have on listed or proposed species or their designated or proposed critical habitat when an action subject to Section 7 of the ESA occurs.
- (1) **Determining Need for Consultation.** Reclamation will determine the need for consultation at the beginning and subsequent phases of planning for proposed actions.
  - (2) **Informal Consultation.** Reclamation will initiate informal consultation when a species/critical habitat is listed in an area that is potentially affected by Reclamation's action.
  - (3) **Formal Consultation.** Reclamation will initiate informal consultation when significant new information becomes available to determine the effects of on-going operations on listed species or designated critical habitat.
  - (4) **Informal Conferencing.** Reclamation will initiate informal conferencing when a proposed species/critical habitat listed in the *Federal Register* occurs in an area that is potentially affected by a Reclamation action.
  - (5) **Formal Conferencing.** Reclamation will initiate formal conferencing when Reclamation determines that a proposed species/critical habitat is likely to be adversely affected by a Reclamation action.
- B. **Preparing Biological Assessments (BA).** BA or evaluations of potential effects are prepared when a Reclamation project or activity may modify the physical environment and affect a listed species or critical habitat (designated or proposed). BAs and evaluations may also be prepared for conferencing on proposed species.
- (1) **Inviting Applicants.** Reclamation will invite the participation of water districts, Tribes, or States as applicants in the consultation process, as appropriate, and involve them in the preparation of BAs, discussions with the FWS and NMFS, and reviews of draft BOs.

## Reclamation Manual

### Directives and Standards

---

- (2) **Data.** Reclamation will use the best scientific and commercial data as determined by Reclamation in cooperation with FWS/NMFS, States, and Tribes as appropriate.
- (3) **Content of BAs and Evaluations.** In preparing BAs and evaluations, Reclamation will meet the regulatory requirements (50 CFR 402) and use the NMFS/FWS ESA Consultation Handbook for additional guidance, in coordination with FWS and NMFS. The scope and depth will vary with the action. However, the BAs and evaluations will normally:
  - (a) Define the proposed Federal action and Reclamation's authority and capability.
  - (b) Identify the area potentially affected by the Federal action.
  - (c) Identify listed and proposed species within the area of potential effect.
  - (d) Discuss identified species' habitat and life history requirements.
  - (e) Discuss identified conservation and recovery needs.
  - (f) Characterize the environmental baseline consistent with 50 CFR 402.02 and FWS/NMFS Consultation Handbook.
  - (g) Describe the relevant direct, indirect, and interrelated and interdependent effects of the Federal action, as well as the cumulative effects, on listed and proposed species and habitats, including but not limited to, effects on:
    - (i) Population numbers.
    - (ii) Population distribution.
    - (iii) Reproduction.
    - (iv) Existing habitat.
    - (v) Designated critical habitat.
  - (h) Include a specific finding of effect for listed and proposed species and designated and proposed critical habitat (i.e., no effect, may affect-not likely to adversely affect, may affect-likely to adversely affect species and will not modify, or likely to adversely modify critical habitat) and the supporting rationale for that finding.
  - (i) Include or reference related/relevant reports/information.

## Reclamation Manual

### Directives and Standards

---

- (j) Identify when incidental take is expected and identify the form and extent of incidental take.
- (k) Identify measures to reduce or eliminate jeopardy and/or reduce take where such conditions are expected to occur.

C. **Preparing Biological Opinions (BO).** During formal consultations, Reclamation will cooperate with the FWS/NMFS to provide information needed for the preparation of BO, including development of reasonable and prudent alternatives (RPA), incidental take statements, reasonable and prudent measures (RPM) and conservation measures.

- (1) **Development of RPA and RPM.** Reclamation will cooperate with FWS and NMFS in determining that their proposed RPAs and RPMs are within Reclamation's legal authority and jurisdiction, economically and technically feasible, and consistent with the purpose and need for the proposed action.
- (2) **Disputing Conclusions in the Draft BO.** Where Reclamation disputes the conclusions reached in a draft BO, Reclamation will clearly state its position, providing appropriate rationale, and encourage the use of dispute resolution processes, if needed.
- (3) **Disputing Conclusions in the Final BO.** Where Reclamation disputes conclusions of a final BO, including the RPAs, Reclamation will clearly state its position, provide appropriate rationale, and identify to FWS/NMFS what RPAs Reclamation will implement and which Reclamation does not believe to be appropriate.
- (4) **Distributing Draft BO.** Reclamation will make copies of the draft BO available to outside parties, upon request and as appropriate, and consider comments received when developing the official response to FWS/NMFS.
- (5) **Monitoring RPM and RPA.** Reclamation will monitor, as necessary, the effectiveness of RPMs and RPAs implemented and reinitiate consultation when the results of monitoring reveals RPMs and RPAs are not effective or no longer needed.

#### 5. Conservation and Recovery Actions.

A. **Discretionary Actions.** Conservation actions, undertaken pursuant to section 7(a)(1), 7(a)(2) (conservation recommendations resulting from informal or formal consultation), and section 4(f)(1) (recovery activities) of the ESA, are discretionary.

## Reclamation Manual

### Directives and Standards

---

- B. **Conserving Species.** Reclamation will consider the need for conservation actions for imperiled species as well as listed, proposed, and candidate species when Reclamation projects can contribute to the protection and recovery of the species.
- C. **Coordinating With Others.** Reclamation will coordinate with the appropriate state and tribal authorities, FWS and NMFS when developing and implementing conservation actions.
- D. **Reviewing Projects and Programs.** Reclamation's project and program managers will review, as and when appropriate, their projects and programs and determine what actions or program modifications are needed, appropriate, and within their authorities for the purposes of conserving listed, proposed, candidate, and imperiled species and avoiding future listing of species.
- E. **Participating in Recovery Plan Activities.** Reclamation will participate in recovery plan activities for listed species that are affected by Reclamation's projects and actions, or when resources under its control are identified in a recovery plan, whether or not Reclamation's actions are a principal or direct cause of the listing of the species which is the subject of the recovery plan. Appropriate recovery plan activities may include participation in the development and implementation of recovery plans. The level of Reclamation's participation will be determined by project/program managers and will depend upon Reclamation's authorities to carry out needed actions, resources available, other project needs, and the degree that Reclamation's actions may contribute to the recovery of the species.
- F. **Factors in Determining Appropriate Conservation Actions.** Reclamation will consider the following in determining which conservation actions are appropriate for implementation by Reclamation:
  - (1) Funding availability and priorities (regional, national).
  - (2) Implementation costs.
  - (3) Authorities.
  - (4) Local support (political and financial).
  - (5) Species' needs (including recovery plan goals and recommendations).
  - (6) Adverse and beneficial effects to imperiled, candidate, proposed, or listed species.
  - (7) Conflicts with other project purposes.



## Reclamation Manual

### Directives and Standards

---

- (8) Conflicts with other resources.
  - (9) Technical feasibility.
  - (10) Agency resources (staff expertise, availability, priorities, tradeoffs).
  - (11) ITA and consultation with Indian tribes.
  - (12) Availability of cost-sharing partners.
- G. **Monitoring Conservation Actions.** Reclamation will monitor, as necessary, the effectiveness of conservation actions implemented and modify actions, as needed, to achieve conservation objectives.
6. **Approach.** Reclamation will consider using a multi-species/ecosystem approach when carrying out consultation and conservation activities based on the following considerations:
- A. Local support (political, financial, tribes, agencies and others).
  - B. Number, kind, interrelations of species affected.
  - C. Immediacy of individual species recovery needs.
  - D. Cost effectiveness of multi-species versus single species approach.
  - E. Agency resources that are available within Reclamation and other agencies.
  - F. Time constraints.
  - G. Information base available.
  - H. Tools available to measure success.
  - I. Extent of Reclamation control/authorities over resources involved/impacted .
7. **Costs of Conservation Actions.** The costs of conservation actions will be non-reimbursable, non-project costs, unless existing or future agreements specifically provide otherwise.
- A. **Allocating Conservation Costs.** While Reclamation will seek cost-sharing partners, conservation actions may be implemented without partners and any Reclamation cost component will be funded on a nonreimbursable basis.

## Reclamation Manual

### Directives and Standards

---

- B. **Cost-Sharing Partners.** Appropriate cost-sharing partners include states, local governments, project sponsors, tribes, and other entities with legal authority to cost share with Reclamation.
  - C. **In-Kind Services.** Cost-sharing support may include in-kind services.
  - D. **Multi-Year Funding.** Reclamation will consider the need for multi-year funding when developing conservation actions and monitoring plans.
8. **Costs of Consultations.**
- A. **Case-by-Case Determination of Costs.** Determinations as to what portion of the costs of preparing biological assessments, carrying out consultations pursuant to section 7(a)(2) (including testing, data collection, and monitoring carried out prior to or as part of a consultation), and implementing the commitments resulting from a consultation will be project costs and what portion will be non-project costs (non-reimbursable) will be made on a case by case basis.
  - B. **Factors in Determining Costs.** In making such determinations, the following factors will be considered:
    - (1) Whether the impacts to species or habitat are directly or indirectly related to the action being consulted upon.
    - (2) Whether the action involves only the continued operation of an existing project or involves a discrete, new activity (such as the construction of a new project or new project facilities; execution of a new, renewal, supplemental, or amendatory water service or repayment contract or other type of contract; transfer of title to project facilities, lands, or water rights; acting on a right-of-way application; etc.).
    - (3) Whether the action avoids additional listings or greater requirements to avoid jeopardizing the continued existence of a species.
    - (4) Whether the action is being undertaken by Reclamation alone or by Reclamation in concert with other agencies and a division of costs can be reached.
    - (5) Whether activities implementing a biological opinion are part of the gathering of general information about the status of listed or proposed species, such as research and monitoring activities.
    - (6) Whether activities implementing a biological opinion are stipulated as conservation measures contributing to the recovery of listed species or avoiding

## Reclamation Manual

### Directives and Standards

---

the listing of additional species, or are specifically required to avoid jeopardy to a listed species or to avoid adverse impacts to critical habitat.

(7) Other circumstances that are specific to the project or action.

- C. **Allocating Consultation Costs.** Costs which are determined to be non-project costs will be non-reimbursable. Costs which are determined to be project costs will be expensed or capitalized as appropriate and will be allocated among project purposes (both reimbursable and non-reimbursable) in accordance with applicable project cost allocation procedures. Any costs allocable to reimbursable project purposes will be borne by project beneficiaries in the appropriate manner.